

HB

270

FISCAL NOTE

Bill Version: CSSSHB 270 (STA)

(H) Publish Date: 3/15/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date _____ Dept. Affected Public Safety
 Title SEXUAL ASSAULT & SEXUAL ABUSE BRU Alaska State Trooper Detachments
 Component: Alaska State Trooper Detachments
 Sponsor Representative Croft
 Requester H. State Affairs Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have an adverse impact on the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 3/3/2000
 Approved by: [Signature] Date 3.6.00
 Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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SENATE COMMITTEE REPORT

DATE: 4/13/00

FURTHER:

DATE TURNED
IN TO OFFICE: 4/18/00

Health, Education and Social Services Committee considered CS FOR SS FOR HOUSE BILL NO. 270(HES)

"An Act relating to payment for certain examinations in cases of sexual assault."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>George Miller</i>	→	<i>Pete Kelly</i>			
<i>REP: [Signature]</i>	✓				
<i>Greene</i>	✓				
CHAIR: <i>Mike Miller</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>DPS</i>	<i>3/6/00</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

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MEMORANDUM

April 14, 2000

SUBJECT: CSSSHB 270(HES) - Sexual Assault Examinations
(Work Order No. 21-LS1108W)

TO: Representative John Coghill Jr.
Attn: Rynniva

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have asked if there are any constitutional or other problems with the provisions of the bill that provide that a law enforcement agency, health care facility, or other entity may not require a victim of certain sexual assaults, who is 16 years of age or older, to pay for the costs of a rape examination. Conceivably, this allows a law enforcement agency, health care facility, or other entity to require a sexual assault victim under the age of 16 to pay for rape kit examinations.

Substantive Due Process. Basically, substantive due process guarantees that laws must make some sense and cannot merely be arbitrary in their scope but must be based upon some rational policy.

Substantive due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose. It is not a court's role to decide whether a particular statute or ordinance is a wise one; the choice between competing notions of public policy is to be made by elected representatives of the people. The constitutional guarantee of substantive due process assures only that a legislative body's decision is not arbitrary but instead based upon some rational policy.

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper. The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification.

Concerned Citizens of South Kenai Peninsula v. Ken, 527 P.2d 447 (Alaska 1974). And, a substantive "due process claim will only stand if the state's actions 'are so irrational or

Representative John Coghill Jr.
April 14, 2000
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arbitrary, or so lacking in fairness, as to shock the universal sense of justice." *Church v. State*, 973 P.2d 1125 (Alaska 1999), quoting *Application of Obermeyer*, 717 P.2d 382, 386-87 (Alaska 1986). Thus, in *Church*, Permanent Fund Dividend residency requirements - that a person must be in Alaska at least 185 days if the person does not qualify for an excused absence - were not unreasonable and were a valid imposition of a bright line rule to ease the administrative burden on the state of determining residency. Also, the Alaska courts have consistently recognized that the protection of minors is a valid legislative purpose for purposes of substantive due process and in so doing have rejected numerous challenges to age limits imposed to prevent minors from drinking, smoking marijuana as a protected activity, etc.

Within our system of government, subject to constitutional limitations, it is the legislature's prerogative to restrict or forbid the use of dangerous intoxicants and, if a restriction is based on age, to establish the age at which persons can presumably be trusted to handle those intoxicants in a mature and socially acceptable manner.

Allum v. State, 830 P.2d 435 (Alaska 1992).

What is unique about this bill is that instead of protecting minors, the bill protects adults and minors 16 years of age or older from being required to pay for sexual assault examinations including administration of the rape kit under AS 18.68.010, while allowing minors under 16 years of age to be required to pay for these examinations no matter how the examination is conducted and regardless of the purpose. The purpose of the bill is to protect victims of sexual assault from being required to pay for forensic examinations that conceivably are being conducted for the benefit of the police. While this is a laudable goal, and clearly a legitimate one that in my opinion would survive a substantive due process challenge, the bill does not apply this protection to all victims but it excludes from its protection those persons who are most unable to protect their interests: children under the age of 16. I fail to see any "legitimate public policy" for this differentiation and the exclusion of minors under the age of 16 from the protective reach of this bill.

I understand that the Alaska Cares program which exists in the Anchorage and Mat-Su areas pays for sexual assault examinations for some children under the age of 16 in the Anchorage and Mat-Su areas and that the existence of this program may explain why the bill excludes children under the age of 16. I do not believe that the existence of this program provides a sufficient "legitimate public policy" to meet a substantive due process challenge. The Alaska Cares program apparently uses Medicaid funds to provide services to certain children but not all children in the Anchorage and Mat-Su areas. I also understand that while this program does not exist throughout the state there is a plan that in the future it eventually would be extended to other urban areas of the state but again not to all areas of the state. The limited nature of this program provides the evidence that it cannot supply the "legitimate public policy" to allow this bill to survive a substantive due process attack. The bill excludes all children under the age of 16 from the protective umbrella it creates for sexual assault victims. The fact that some of the children excluded may be covered by this program does not justify

Representative John Coghill Jr.

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the legislature excluding all children. Further, the fact that this program in the future may exist in all the urban areas of the state, but not the rural areas, points up the "illegitimate" nature of this justification. A justification, or in this case a classification, that discriminates on the basis of whether the sexual assault victim has obtained the talismanic age of 16, or in the future whether the sexual assault victim is lucky enough to live in an urban area, and thereby allows the child sexual assault victim to be required to pay for a sexual assault examination - a loss of property - does not provide a legitimate public policy that comports with the due process clause of the Alaska or United States Constitutions nor with the equal protection clauses of those Constitutions.

Equal Protection. In Alaska, the courts apply the equal protection clause in the following manner:

This court must first identify the individual interest impaired by the statute and evaluate its importance; we then identify the social purposes underlying the statute and evaluate their importance. The level of justification required for the statute rises in proportion to the importance of the individual interest it affects. Depending upon the importance of that individual interest, the government's interest in enacting the statute must fall somewhere on a continuum between "mere legitimacy" to a "compelling interest". . .

Second, if the government's interest in enacting the statute is sufficiently strong, this court must examine the connection between the social policies underlying the statute and the means adopted in the statute to further those policies. Again, depending upon the importance of the individual interest affected, this nexus between ends and means must fall somewhere on a continuum between "substantial relationship" and "least restrictive alternative".

Allum, supra. at 439-440. The classification provided in the bill based upon the age of the sexual assault victim does not, in my opinion, meet even the mere legitimacy standard even if the child sexual assault victim's interest is found to be unimportant.

GPL:lmb:jr:glc
00-024.lmb



Representative Eric Croft

Sponsor Statement

Sponsor Substitute for House Bill 270

"Payment of Evidentiary Forensic Exams"

SSHB 270 makes sure that adult victims of sexual assault are not charged the costs of evidentiary forensic exams.

A victim of sexual assault has by definition been victimized once. In order to facilitate investigation of the crime and prosecution of the criminal, a victim is often asked to submit to a forensic exam to gather evidence. The forensic exams often involve taking physical samples and photographs. While it is the ordinary police practice to pay for these evidence gathering exams, some victims now report that they have been asked to pay for the cost of the forensic exam itself through their medical insurance. To victims of sexual assault, this is a third victimization.

When a house is burglarized and law enforcement takes photos or fingerprints of evidence, the victim is never sent the bill, directly or indirectly, or asked to have their homeowners' insurance billed. Nor should they. We have faith that most law enforcement agencies take responsibility for victims' needs and appropriately pay for evidentiary exams as needed. Those few agencies that attempt to transfer this cost to the victim should be stopped.

With the passage of SSHB 270, victims would be assured that they could not be required to pay for evidentiary forensic exams.

Bill History/Action Display



BILL: HB 270 SHORT TITLE: PAYMENT OF SEXUAL ABUSE EXAMINATIONS
 BILL VERSION: CSSSHB 270(HES)
 SPONSOR(S): REPRESENTATIVES(S) CROFT, Halcro, Kerttula, Smalley, Dyson,
 Coghill, Green, Whitaker, Morgan, Kemplen, Hudson, Bunde, Phillips,
 Cowdery, James, Kapsner, Joule, Harris, Murkowski, Williams, Therriault,
 Cissna

CURRENT STATUS: (S) HES

STATUS DATE: 4/13/00

TITLE: "An Act relating to payment for certain examinations in cases of sexual assault."

[Full Text](#)
[Fiscal Notes](#)

Detailed 2000 fiscal note information currently not available on-line.

[Bill History](#)

Jrn-Date	Jrn-Page	Action
1/10/00	<u>1890</u>	(H) PREFILE RELEASED 1/7/00
1/10/00	<u>1890</u>	(H) READ THE FIRST TIME - REFERRALS
1/10/00	<u>1890</u>	(H) STA, HES, FIN
1/21/00	<u>1976</u>	(H) COSPONSOR(S): KERTTULA
2/16/00	<u>2224</u>	(H) COSPONSOR(S): SMALLEY
2/18/00	<u>2236</u>	(H) SPONSOR SUBSTITUTE INTRODUCED
2/18/00	<u>2237</u>	(H) READ THE FIRST TIME - REFERRALS
2/18/00	<u>2237</u>	(H) STA, HES, FIN
3/07/00	<u>Text</u>	(H) STA AT 8:00 AM CAPITOL 102
3/07/00	<u>Text</u>	(H) Scheduled But Not Heard
3/09/00	<u>Text</u>	(H) STA AT 8:00 AM CAPITOL 102
3/09/00	<u>Text</u>	(H) Moved CSHB 270(STA) Out of Committee
3/09/00	<u>Text</u>	(H) MINUTE(STA)
3/15/00	<u>2487</u>	(H) STA RPT CS(STA) NT 4DP
3/15/00	<u>2487</u>	(H) DP: JAMES, GREEN, HUDSON, OGAN
3/15/00	<u>2488</u>	(H) ZERO FISCAL NOTE (DPS)
3/16/00	<u>Text</u>	(H) HES AT 3:00 PM CAPITOL 106
3/16/00	<u>Text</u>	(H) Scheduled But Not Heard
3/23/00	<u>Text</u>	(H) HES AT 3:00 PM CAPITOL 106
3/23/00	<u>Text</u>	(H) Heard & Held
3/28/00	<u>Text</u>	(H) HES AT 3:00 PM CAPITOL 106
3/28/00	<u>Text</u>	(H) Moved CSHB 270(HES) Out of Committee
3/31/00	<u>2801</u>	(H) HES RPT CS(HES) NT 4DP 2NR
3/31/00	<u>2801</u>	(H) DP: GREEN, DYSON, COGHILL, WHITAKER;
3/31/00	<u>2801</u>	(H) NR: MORGAN, KEMPLEN
3/31/00	<u>2801</u>	(H) ZERO FISCAL NOTE (DPS) 3/15/00
3/31/00	<u>2819</u>	(H) COSPONSOR(S): DYSON, COGHILL, GREEN,
3/31/00	<u>2819</u>	(H) WHITAKER, MORGAN, KEMPLEN
4/10/00	<u>Text</u>	(H) FIN AT 1:30 PM HOUSE FINANCE 519
4/10/00	<u>Text</u>	(H) Moved CSHB 270(HES) Out of Committee
4/10/00	<u>Text</u>	(H) MINUTE(FIN)
4/10/00	<u>2979</u>	(H) FIN RPT CS(HES) NT 10DP
4/10/00	<u>2980</u>	(H) DP: THERRIAULT, BUNDE, AUSTERMAN,
4/10/00	<u>2980</u>	(H) DAVIES, GRUSSENDORF, MOSES, DAVIS,
4/10/00	<u>2980</u>	(H) WILLIAMS, FOSTER, PHILLIPS
4/10/00	<u>2980</u>	(H) ZERO FISCAL NOTE (DPS) 3/15/00
4/10/00	<u>2992</u>	(H) COSPONSOR(S): HUDSON, BUNDE, PHILLIPS
4/11/00	<u>3062</u>	(H) COSPONSOR(S): COWDERY
4/12/00	<u>3081</u>	(H) RLS TO CALENDAR 4/12/00
4/12/00	<u>3081</u>	(H) READ THE SECOND TIME
4/12/00	<u>3081</u>	(H) HES CS ADOPTED UNAN CONSENT

4/12/00	<u>3081</u>	(H)	ADVANCED TO THIRD READING UNAN CONSENT
4/12/00	<u>3081</u>	(H)	READ THE THIRD TIME CSSSHB 270 (HES)
4/12/00	<u>3081</u>	(H)	PASSED Y37 A3
4/12/00	<u>3084</u>	(H)	CROFT NOTICE OF RECONSIDERATION
4/12/00	<u>3084</u>	(H)	RECONSIDERATION WITHDRAWN
4/12/00	<u>3096</u>	(H)	COSPONSOR(S): JAMES, KAPSNER, JOULE,
4/12/00	<u>3096</u>	(H)	HARRIS, MURKOWSKI, WILLIAMS,
4/13/00	<u>3096</u>	(H)	THERRIAULT, CISSNA
4/12/00	<u>3096</u>	(H)	TRANSMITTED TO (S)
4/13/00		(S)	READ THE FIRST TIME - REFERRALS
4/13/00		(S)	HES
4/13/00		(S)	REFERRED TO HEALTH, EDUCATION & SOCIAL S

Similar Subject or Exact Subject Match

CRIMES

CRIMINAL PROCEDURE

HOSPITALS

LAW ENFORCEMENT

MEDICAL CARE

PHYSICIANS

Bill Root:

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Journal Text



04/10/00

House Journal

Page 2980

HB 270

and recommends it be replaced with:

CS SPONSOR SUBSTITUTE FOR HOUSE BILL NO.
270 (HES)

"An ing to payment for certain examinations in cases of
sexual assa

The report was signed by Representative Therriault, Co-chair, with the
following individual recommendations:

Do pass (10): Therriault, Bunde, Austerman, Davies, Crussendorf,
Moses, Davis, Williams, Foster, Phillips

The following fiscal note applies to CSSSHB 270 (HES):

Zero fiscal note, Dept. of Public Safety, 3/15/00

SSHB 270 was referred to the Rules Committee for placement on the
calendar.

Bill Root:

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John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

February 3, 2000

Representative Eric Croft
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

Dear Representative Croft:

Thank you for providing us yesterday with a copy of the current (attached) work draft of CSHB 270.

Our original opposition was to the financial responsibility for testing for sexually transmitted diseases and emergency contraception. Those matters were not law enforcement related. Now that those components have been removed from the bill, we have changed our position. We agree that victims should not have to pay for evidentiary exams. We've reviewed the changes and now endorse the attached work draft of CSHB 270.

You may contact us at the APOA office in Anchorage at 277-0515.

Sincerely,

John Charbonneau
State President

Attachment

cc: Representative Jeannette James

Key Faulkner
403 N Hill
Kenai, AK 99661

To whom it may concern,
I would like to ask that
you please support the
HB-270 bill.

Thank you,

Key Faulkner

TO WHOM IT MAY CONCERN,

PLEASE SUPPORT HB 2770. WE RAPE VICTIMS
WOULD REALLY SUPPORT YOU IF YOU NEEDED
HELP TOO. THANK YOU.

Sincerely
TLC client
403 N Gill
Kenai AK
-99611-

To: Alaska Network on Domestic Violence
and Sexual Assault:

I'd like to support an HB270
for rape exam bill.

From:

Frances C. Stuart
403 N. Gill St.
Kenai, Alaska
99611